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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re R.H., a Person Coming
Under the Juvenile Court Law.

B292900

(Los Angeles County
Super. Ct. No.
18LJJP00370)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

S.H. et al.,

Defendants and
Appellants.

APPEALS from an order of the Superior Court of Los Angeles County, Steven E. Ipson, Commissioner. Dismissed.

Leslie A. Barry, under appointment by the Court of Appeal, for Defendant and Appellant S.H.

Karen J. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant R.H.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Peter Ferrera, Deputy County Counsel, for Plaintiff and Respondent.

Mother, S.H., and her son, R.H., appeal a jurisdictional order relating to R.H. Because the juvenile court has since released R.H. to mother's care and terminated jurisdiction, no relief can be granted and we dismiss the appeals as moot.

BACKGROUND

Because we dismiss the appeals as moot, only a brief overview of the factual and procedural history is included here.

Mother, who was 17 years old and the subject of an open juvenile dependency proceeding,¹ gave birth to R.H. in May 2018. She and R.H. both tested negative for drugs. A hospital staffer who noted that mother was a foster child with a history of substance abuse and "AWOLing" called the Los Angeles County

¹In a petition filed on September 13, 2017, DCFS alleged that maternal grandmother endangered mother and one of her 11 siblings by using meth in their presence, allowing a registered sex offender to reside in their home, and failing to pick up mother from the hospital after she was treated for an injury. It is unclear from the record what became of the petition; the last reference indicates that it was set for adjudication in September 2018, three months before mother's eighteenth birthday.

Department of Children and Family Services (DCFS) “to verify that mother is able to care for the baby.” The nurse and hospital social worker caring for mother both told DCFS that they did not have concerns about her ability to care for R.H. The responding social worker nevertheless created a safety plan, which mother signed. Pursuant to the plan, mother agreed to remain in her placement, abide by her foster mother’s household rules, and leave R.H. at the placement if she went out with friends.

During a follow-up visit to mother’s placement, the social worker observed mother feeding R.H. and noted that he was very alert and appeared to be meeting his developmental milestones. Medical records from R.H.’s pediatrician confirmed this impression. Mother’s foster mother told the social worker that mother was following the safety plan and “doing good with caring for her son mostly on her own.” The social worker noted that “since the baby was born the mother has demonstrated by her actions that she appears committed to remaining sober while caring for her child and she has not awoled or taken the baby to inappropriate homes etc.” DCFS nevertheless remained “concerned regarding her past drug use and her awoling from placement for multiple days at a time prior to the baby being born,” and feared “these behaviors” and unspecified “unsafe decisions” mother was making could compromise R.H.’s “overall safety.”

DCFS filed a “non-detain” petition under Welfare and Institutions Code section 300² and an accompanying report on June 15, 2018. The petition alleged that mother “has a history of substance abuse and is a current abuser of methamphetamines

²All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

and marijuana, which renders the mother unable to provide regular care and supervision of the child. The mother used methamphetamines and marijuana during the mother's pregnancy with the child. The child is of such young age requiring constant care and supervision and the mother's substance abuse interferes with the mother's ability to provide regular care and appropriate supervision of the child. The mother's substance abuse endangers the child's physical health and safety and place [*sic*] the child at risk of serious physical harm, damage, and danger."

In the report, DCFS concluded that R.H. was at high risk of harm. In its assessment, mother's past conduct was indicative of general neglect. The report cited mother's "extensive history with DCFS as a minor," "history of leaving placement," lack of prenatal care, past drug use, and experiences of domestic violence with two former boyfriends, 21-year-old A. and an unidentified 32-year-old. DCFS recommended that the petition be sustained "to ensure that the mother follows through with all recommended services and continues to provide a safe environment for minor [R.H.]." The juvenile court found the petition supported by prima facie evidence on June 18, 2018 and set an adjudication hearing for July 18, 2018.

In the jurisdiction/disposition report filed in advance of the hearing, DCFS summarized interviews with mother and several of her service providers. Mother told DCFS that she began using marijuana at age nine or 10, because her older siblings thought it was funny to get her high, and started using methamphetamine with her mother's permission at age 14. Mother used drugs on and off for the next several years, but got sober on her own after the second trimester of her pregnancy because she "knew it

wasn't good." She last used drugs in February 2018, had enrolled in a continuing education high school, and hoped to go to college and become a nurse after she graduated.

Mother's service providers generally praised mother and expressed no concerns about her ability to care for R.H. Mother's drug treatment counselor called mother "one of her best participants in the outpatient program." She stated that mother always tested negative for drugs and continued to attend and actively participate in group treatment sessions even though she successfully completed the program during her pregnancy. Mother's therapist alone alluded to unspecified "negative influences in her life that could take her down a more negative path." DCFS observed R.H. to be a "healthy . . . month old child" who "appeared comfortable in the care of his Mother as observed by him remaining calm and content in her care," and noted that his pediatrician had no concerns at his one-month well-child visit. At the conclusion of the report, DCFS again "recommended that a non-detained petition continue so that Mother can receive further supervision from the court to ensure that the mother follows through with all recommended services and continues to provide a safe environment for minor [R.H]."

The trial court heard and dismissed the petition on July 18, 2018. It stated that although it had "some reservations," mother had made good progress in her treatment and appeared to be sober. The court also stated that "what's alleged in front of me" did not support its exercise of jurisdiction.

DCFS successfully applied for rehearing pursuant to section 252. Prior to the rehearing, it filed a supplemental report detailing recent developments in the case. According to the report, mother failed to appear for two meetings and a therapy

session in July 2018. She also brought allegedly abusive ex-boyfriend A. to her drug treatment center and allowed him to watch R.H. during her group session. The report also noted that DCFS received and investigated a referral alleging that mother was neglecting R.H. The outcome of the investigation is unclear, but mother agreed to an updated safety plan under which she would cease all contact with the ex-boyfriend. Mother's foster mother, service providers, and school principal all commended mother's conduct and care of R.H., and DCFS observed that mother "presented bonded with [R.H.] and showed affection towards him." DCFS recommended "Court oversight" for mother and R.H.

In a last-minute information, DCFS documented an interview with mother's drug counselor. The counselor again reported that mother had made "amazing" progress in her drug treatment program, and she continued to test clean. The counselor had "no immediate concern regarding relapse aside from the general relapse risk" and did not think mother would qualify for further programming or "aftercare" "given the length of time since her last documented or admitted drug use."

At the September 14, 2018 rehearing, DCFS called mother as a witness. Mother admitted that she used marijuana since the age of nine or 10 and meth since the age of 14, "on-and-off," including during her pregnancy. She stopped using drugs in February 2018, had not had any cravings to use drugs since that point, and consistently tested clean. Mother denied having any "triggers" for drug use—"I don't do drugs anymore"—and attributed her ongoing sobriety to R.H., stating, "I understand and realize, if I do use any type of drugs, he will be taken from me." On cross-examination mother testified that R.H.

“motivates” her and became emotional when asked about her drug use during pregnancy. She also stated that she had learned skills to help her stay sober.

Mother called her drug treatment counselor and school principal as her witnesses. Both mandated reporters testified that they had no concerns about mother’s parenting. Mother’s counselor described mother’s interactions with R.H. as “all . . . positive” and said “she always puts him first.” Mother’s principal described mother as “an all-around exceptional student” who attended school more than required and was “very loving and caring and very protective” of R.H.

The juvenile court amended the petition by interlineation to allege that mother was a “recent” rather than “current” abuser of drugs and sustained it as amended. The court explained: “I have no doubt, [mother], you love [R.H.] very much. That comes quite through in the reports, as well as your own testimony. However, what the court has before it is an undisputed history, long deep-seated history of substance abuse that began with marijuana and rose to methamphetamine with daily use, sometimes twice a day, also participation. And you’re a minor. I’m not saying you knowingly engaged in this, but part of an environment [*sic*] in which there was trafficking of drugs. And in the court’s view, there’s such deep-seated substance abuse history here that despite being sober since February 2018, I don’t believe that. . . in and of itself eliminates the risk of serious physical harm. And, rather, I think given the deep-seated substance abuse history, the progress you’ve made to date is encouraging but in the court’s view there’s a current risk of harm.”

At a disposition hearing on September 21, 2018, the court declared R.H. a dependent. It denied DCFS’s request that

mother drug test on demand, ordering instead that she be subject to test only on suspicion of use. The court also declined to order mental health counseling; it ruled that individual counseling could be provided through mother's wraparound services. It ordered family preservation services and ordered mother to participate in a parenting program. It placed R.H. with mother and set a review hearing for March 11, 2019.

Mother and R.H. both timely appealed. DCFS cross-appealed from the dispositional orders but later filed a request to dismiss the cross-appeal under California Rules of Court, rule 8.244(c). We granted the request.

DISCUSSION

The juvenile court held the March 11, 2019 review hearing while the instant appeals were pending. We take judicial notice of the minute order from that hearing, which DCFS filed in this court on March 14, 2019, pursuant to Evidence Code sections 452, subdivision (d) and 459. The minute order states that the court read and considered a report prepared by DCFS, found that "those conditions which would justify the initial assumption of jurisdiction under WIC section 300 no longer exist and are not likely to exist if supervision is withdrawn," and terminated jurisdiction. The order further states that the court released R.H. to mother and issued an order granting her sole legal and physical custody.

Termination of juvenile court jurisdiction typically renders an appeal from a juvenile court order moot: "As a general rule, an order terminating juvenile court jurisdiction renders an appeal from a previous order in the dependency proceedings moot." (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.) "[T]he critical factor in considering whether a dependency appeal is

moot is whether the appellate court can provide any effective relief if it finds reversible error.” (*In re N.S.* (2016) 245 Cal.App.4th 53, 60.) “[N]o direct relief can be granted” when “the juvenile court no longer has jurisdiction and we are only reviewing that court’s ruling.” (*In re Michelle M.* (1992) 8 Cal.App.4th 326, 330.) On the other hand, a case “is not moot if the purported error is of such magnitude as to infect the outcome of [subsequent proceedings] or where the alleged defect undermines the juvenile court’s initial jurisdictional finding. Consequently the question of mootness must be decided on a case-by-case basis.” (*In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1547.)

We invited the parties to submit letter briefs addressing the effect of the March 11, 2019 order on these appeals; all three parties elected to do so.

Mother and R.H. jointly argue that “even when dependency jurisdiction is terminated, a reversal of erroneous jurisdictional findings can offer the parent effective relief from there having been a sustained petition and prevent an erroneous order from evading review.” DCFS contends that we should dismiss the appeals as moot because no effective relief can be granted. It further contends that “[a]ny concerns mother might express regarding the potential for future prejudice would be highly speculative.”

We agree with DCFS. Despite any error that may have occurred in the proceedings, no effective relief can be granted to mother or R.H. at this time. Mother has been awarded sole legal and physical custody of R.H., and the jurisdictional findings are not the basis of any current order that is adverse to her. It is speculative at this point whether those findings will have any

impact on mother in the future, particularly where mother does not contest the underlying fact of her substance abuse. (See *In re N.S.*, *supra*, 245 Cal.App.4th at p. 63.) That fact would almost certainly be available in any future dependency proceedings. However, so would the facts that mother voluntarily stopped using drugs and extended her treatment, cooperated with DCFS at every step of the way, retained custody of R.H. at all times, and quickly allayed the court's concerns. (See *ibid.*)

Mother's contention that reaching the merits would "prevent an erroneous order from evading review" appears to be predicated upon *In re Joshua C.*, *supra*, 24 Cal.App.4th 1544, 1548, which reached the merits of an appeal brought by a father who remained subject to adverse visitation orders after jurisdiction was terminated. "[U]nlike here, the jurisdictional findings in *Joshua C.* were the foundation for visitation-and-custody orders that remained in effect." (*In re N.S.*, *supra*, 245 Cal.App.4th at p. 61.) Here, no orders remain to be challenged. We agree with *In re N.S.*, *supra*, 245 Cal.App.4th at p. 62, that parents must make a "showing that the challenged orders adversely affected them in light of the dismissal" to warrant review of jurisdictional findings after jurisdiction has been favorably terminated.

Like the court in *In re N.S.*, *supra*, 245 Cal.App.4th at p. 62, "[w]e are sympathetic to Mother's argument that dismissing this appeal will insulate from review the jurisdictional findings that were arguably entered after excessive weight was given to past conduct and insufficient weight was given to the circumstances existing at the time of the jurisdictional hearing." We also "understand the desire of parents to challenge negative findings made about their parenting in dependency proceedings even

when they are ultimately able to regain custody of their children.” (*Ibid.*) “But even if we were to conclude that the juvenile court’s jurisdictional findings erroneously resolved a close call, there remains no effective relief we could give Mother beyond that which she has already obtained.” (*Ibid.*) We accordingly decline to exercise our discretion to decide the case on the merits.

DISPOSITION

The appeals are moot and are therefore dismissed.

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COLLINS, J.

We concur:

MANELLA, P. J.

CURREY, J.